



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

MARK-UP FROM DR AOC template to First Offer

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ADMINISTRATIVE AGREEMENT AND ORDER BY CONSENT  
IN THE MATTER OF

Former Fairchild Camera and Instrument Company Site )  
 )  
333 Western Avenue, South Portland, Maine )  
 )  
PROCEEDING UNDER 38 M.R.S.A. § 1304(12) ) ADMINISTRATIVE  
of the ) AGREEMENT and ORDER  
HAZARDOUS WASTE, SEPTAGE AND SOLID ) BY CONSENT  
WASTE MANAGEMENT ACT, )  
38 M.R.S. §§ 1301-1319-Y )

{Insert Site Name} )

{Insert Site Address} )

PROCEEDING UNDER 38 M.R.S.A § 1304(12) ) ADMINISTRATIVE ORDER  
of the ) BY CONSENT  
HAZARDOUS WASTE, SEPTAGE AND SOLID )  
WASTE MANAGEMENT ACT, )  
38 M.R.S. §§ 1301-1319-Y, )  
and the )  
UNCONTROLLED HAZARDOUS SUBSTANCE )  
SITE LAW, 38 M.R.S. §§ 1361-1371 )  
 )

**L PARTIES**

1. The parties~~Parties~~ to this Administrative Agreement and Order by Consent (“Consent Agreement”) are: ~~[List all parties using the following formats for identification.]~~
- A. Texas Instruments Incorporated (“TI”) is a Delaware corporation engaged in the manufacturing of semiconductor products at a facility located at 5 Foden Road, South Portland, Maine (the “TI facility”).
- A. ~~[Name and Address—see formats below] is the current owner of the [Site Name].~~
- B. ~~[name of the individual] is an individual whose address is [street address, city, state, zip code].~~
- C. ~~[Insert name of individual] operates a [type of business] doing business under the name of [name of business] with its principal location at [principal location of business].~~
- D. ~~[Entity name as listed by the Maine Bureau of Corporations] is a Maine [corporation/company/other entity] that operates a [type of business] with its principal location at [principal location of business]. [name of the responsible corporate officer] is the [title] of [corporation/company/other entity] and the duly authorized agent of [corporation/company/other entity], authorized to consent to this Administrative Order by Consent on behalf of [corporation/company/other entity].~~
- E. ~~[Entity name] is a [state corporation/company/other entity] authorized to conduct business in Maine that operates a [type of business] with its principal location at [principal location of business]. [entity name] conducts business in Maine at [address, city], Maine. [name of the responsible corporate officer] is the [title] of [corporation/company/other entity] and the duly authorized agent of [corporation/company/other entity], authorized to consent to this Administrative Order by Consent on behalf of [corporation/company/other entity].~~
- F. ~~[town name] is a municipal corporation which is organized and exists under the laws of the State of Maine.~~
- G.B. The Maine Department of Environmental Protection (“DEP”) is an agency of the State of Maine. Under 38 M.R.S. § 341-A, the DEP is charged with the responsibility of administering and enforcing Maine environmental laws and regulations. For the purpose of this Consent Agreement, DEP shall include any successor department or agency of the State.

## II. BACKGROUND

2. Fairchild Camera and Instrument Company (“FCIC”) began semiconductor manufacturing operations at the Site (as defined in subparagraph 19(I)) beginning in 1962.
3. Several solvent releases occurred at the FCIC facility in the 1973 to 1979 time frame.

The most substantial of these spills, an estimated 8,000 gallon release of waste chlorinated solvents (including trichloroethylene (“TCE”)) from an underground storage tank, was discovered by FCIC in 1974. Use of TCE at the facility was discontinued in 1979.

4. In 1979, FCIC (including its division, Fairchild Semiconductor International, Inc.) became a subsidiary of Schlumberger Limited.
5. The Site was the subject of a June 6, 1983 “Administrative Agreement Regarding Ground Water Improvement” by and between FCIC, the Maine Board of Environmental Protection (the “Board”) and the Maine Attorney General’s Office (the “1983 Consent Agreement”). Among other things, the 1983 Consent Agreement required FCIC to (a) construct and operate an interceptor trench for the containment and treatment of solvent-contaminated groundwater that originated at the Site and was migrating off-site; (b) place soils excavated from the trench in a spoil area designed to prevent contaminants from entering surface drainage at the Site; and (c) implement a DEP-approved groundwater monitoring plan.
6. On January 9, 1985, FCIC entered into an “Amendment to Administrative Agreement Regarding Ground Water Improvement” with the Board and the State of Maine of Maine Attorney General (the “1985 Amendment”). Among other things, the 1985 Amendment specified that, because the spoil area had reached capacity, certain areas on the FCIC property be designated as “landscaping berms” to be used for the placement of solvent-contaminated soils excavated as the result of current and future construction activity. The 1985 Amendment also required that if the capacity of the landscaping berms was exceeded as a result of future construction, DEP’s approval would be required for the management of soils with solvent concentrations above certain levels.
7. On December 26, 1985, FCIC changed its corporate name to Fairchild Semiconductor Corporation.
8. On April 23, 1986, FCIC (Fairchild Semiconductor Corporation) entered into an “Amendment to Administrative Agreement Regarding Ground Water Improvement” with the Board and the State of Maine of Maine Attorney General (the “1986 Amendment”). This amendment clarified and specified the use of certain analytical methods to be used for the semi-annual groundwater events.
9. National Semiconductor Corporation (“NSC”) acquired Fairchild Semiconductor Corporation from Schlumberger Limited in 1987, thereby becoming the owner of (among other things) the Site. In 1996, NSC purchased land adjacent to the Site and built a new semiconductor manufacturing facility.
10. In 1997, NSC sold the physical assets and land of the former Fairchild Semiconductor Corporation, including the Site, to a newly created entity, also named Fairchild Semiconductor Corporation (“FSC”). This resulted in NSC and the new FSC owning and operating two separate but adjoining semiconductor manufacturing facilities. Under the

terms of the agreement between the parties, NSC retained liability for remediation of historic solvent contamination that had originally occurred at the Site.

11. In 2011, TI acquired NSC in a stock purchase, thus inheriting the liabilities of NSC related to historic solvent contamination at the Site.
12. NSC complied in all respects with the 1983 Consent Agreement. The interceptor trench was completed in accordance with the 1983 Consent Agreement, and has been operational since that time. NSC and, subsequently, TI have complied with the groundwater monitoring plan approved in the 1983 Consent Agreement and as subsequently modified and approved by DEP.
13. A RCRA Facility Assessment ("RFA") of the Site and certain limited portions of the TI facility was initiated in 2008 by the U.S. Environmental Protection Agency ("EPA") and DEP, the purpose of which was to identify, gather information on, and evaluate the potential for releases to the environment from areas of concern ("AOCs"), including solid waste management units ("SWMUs"), where releases of hazardous constituents may have occurred in the past. A total of 10 AOCs and 12 SWMUs were identified in a "RCRA Facility Assessment Report," dated September 30, 2010. NSC submitted written comment on the report to DEP on April 1, 2011. In correspondence dated April 27, 2011, DEP accepted NSC comments and these comments, along with the 2010 report, constitute the final RCRA Facility Assessment Report (the "RFA Report").
14. The RFA Report concluded that (a) AOCs 2, 3, 8, and 9, and SWMUs 3, 4, 5, 6, and 8 required no further action; (b) additional information only was required with regard to SWMUs 9 and 10 and AOC 5; and (c) confirmatory sampling only was required with regard to SWMUs 1 and 11; AOCs 6, and 10; and portions of SWMUs 2 and 7 and AOC 1.
15. The RFA Report recommended that a RCRA Facility Investigation ("RFI") be conducted regarding (a) soil at AOC 7 ("On-Site Soil RFI"); (b) SWMU-12 ("On-site Source Area RFI"); and (c) AOC 4 ("Groundwater Collection Trench and Downgradient Groundwater RFI," hereinafter, "Downgradient Groundwater RFI").
16. The On-Site Soil RFI has been completed pursuant to a DEP-approved work plan and the On-Site Soil RFI report was submitted to DEP on November 24, 2014. The On-Site Soil RFI report also included the results of the confirmatory sampling requested in the RFA Report (for SWMUs 1 and 11; AOCs 6, and 10; and portions of SWMUs 2 and 7 and AOC 1).
17. A work plan for the On-Site Source Area RFI, to be completed in three phases (Phase 1 (Geoprobe Investigation); Phase 2 (Microwell Installation and Testing); and Phase 3 (Monitoring Well Installation and Hydraulic Conductivity Testing)), was submitted to DEP. Phase 1 and Phase 2 of the On-Site Source Area RFI have been completed in accordance DEP-approved work plans and the results reported to DEP.

18. The work plan for the Downgradient Groundwater RFI has been approved by DEP.

### ~~H.III.~~ DEFINITIONS

~~2.19.~~ The following definitions shall apply in this ~~Administrative Order by Consent~~ Agreement:

- A. ~~"Approved"~~ means approved ~~or~~ approved upon conditions ~~or modified~~ by DEP as set forth in ~~subparagraph 33.B subparagraphs 18.A. i., ii., or iii.~~ of this ~~Administrative Order by Consent~~ Agreement.
- B. "Clean-up levels protective of public health" means that Site contaminants are at concentrations that meet, as applicable, Maine Remedial Action Guidelines for Sites Contaminated with Hazardous Substances ("Maine RAGS") Soil Construction Worker or Groundwater Construction Worker standards. ~~site contaminants are reduced to a concentration where exposure to a reasonably maximum exposed individual to site contaminants would not result in risks that either exceed a Hazard Index of one (1) or an Incremental Lifetime Cancer Risk of one in one hundred thousand (1E-05).~~
- C. ~~"Commissioner"~~ means the Commissioner of the Department of Environmental Protection.
- D. ~~"Consent Agreement"~~ Order means this Administrative Agreement and Order by Consent, including all figures and appendices attached hereto and all reports, plans, specifications, schedules or other documents submitted and approved; ~~modified~~ or amended, pursuant to this Consent Agreement ~~Order~~.
- E. ~~"Days"~~ means calendar days unless otherwise specified.
- F. "Effective date" means the effective date of this Consent Agreement ~~Order~~ and is determined by the date that this Consent Agreement ~~Order~~ is signed by the Attorney General or his/her representative, who shall be the last person to sign the Consent Agreement ~~Order~~.
- G. ~~"Hazardous waste"~~ substance means any material identified as a hazardous ~~waste~~ substance pursuant to 38 M.R.S. § ~~1319-Q1362~~(1).
- H. ~~"Prime rate of interest"~~ means the rate of interest established by ~~The Wall Street Journal~~

~~... which surveys large banks and publishes the consensus prime rate. The Journal surveys the 30 largest banks, and when three-quarters of them (23) change, the Journal changes its rate, effective on the day the Journal publishes the new rate. It's the most widely quoted measure of the prime rate, which is the rate at which banks will lend money to their most favored customers. The prime rate will move up or down in lock step with changes by the Federal Reserve~~

~~Board.~~<sup>4</sup>

~~I.H.~~ "Parties" mean all the parties to this Consent ~~Agreement~~Order that are listed in Section ~~I~~.

~~J.~~ "Site" "Respondents" means the parties that are listed in paragraphs 1.A through 1.F, inclusive. [Note: Ensure that the cross reference to the paragraph numbers is accurate]

~~K.~~ "Response or Oversight Costs" shall mean the Former Fairchild Camera and Instrument Company all of the State's costs which are recoverable under 38 M.R.S. § 1367, including payroll costs, contractor costs, travel costs, laboratory costs, costs related to this Consent Order including the costs of reviewing or commenting on plans, reports or other items pursuant to this Consent Order, verifying the remedial action, or otherwise implementing or enforcing this Consent Order, and interest and indirect costs incurred with respect to the Site.

~~L.I.~~ "Site" shall mean the [general description, e.g. "the original manufacturing facility, for the ABC Company"], as identified in Attachment A, which is ("Site Designation"), and that is located at 333 Western Avenue in South Portland, and [Street Address(es), e.g. 123 Brunswick Street and 211 Main Street] in [Town], and is identified on the South Portland[Town] Tax Map 048[number] as Lot 002F, as Lots [number(s)], which are further described in Book 12984,[number], Page 0015, at the Cumberland[number(s)], [if multiple lots, add "respectively"], at the [name] County Registry of Deeds ("Site")." or "[insert short name, e.g. 'ABC Company Site']". The Site is approximately 20.33[number] acres in size. A mapMap of the Site is included as Attachment B.

#### ~~III~~IV. JURISDICTION

~~3.20.~~ This Consent ~~Agreement~~Order is issued pursuant to the authority vested in the Commissioner by the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S. §§ 1301-1319-Y ~~and the Uncontrolled Hazardous Substance Sites Law, 38 M.R.S. §§ 1361-1371.~~

~~4.21.~~ The ~~Respondent does~~Respondents do not contest DEP's jurisdiction to issue this Consent ~~Agreement~~Order and the ~~Respondent does~~Respondents do not contest DEP's determination that a factual and legal basis exists to support issuance of this Consent ~~Agreement~~Order under the authority of 38 M.R.S. § 1304(12). ~~), and 38 M.R.S. §§ 1364-1365. Respondents waive their right to a hearing on any issue of fact or law or requirements set forth in this Consent Order.~~

<sup>4</sup> Website "Bankrate" downloaded November 20, 2015 (<http://www.bankrate.com/rates/interest-rates/wall-street-prime-rate.aspx>)

22. This Consent ~~Agreement~~Order shall apply to and be binding upon the Respondent, its Respondents, their successors and assigns, and its officers and directors in their official capacities.

~~5-23.~~ Respondent shall provide copies of this Consent Agreement to its, ~~and~~ consultants or others retained pursuant to this Consent ~~Agreement~~Order.

#### ~~IV.~~V. **STATEMENT OF PURPOSE**

~~6-24.~~ The objectives of this Consent ~~Agreement~~Order are to protect public health and the environment by undertaking the following: ~~{modify as appropriate}~~:

- A. Determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous ~~waste~~substances, including contaminants, at or from the Site, by ~~completing~~conducting a Remedial Investigation as more specifically set forth in the RFI Statement of Work ("SOW") attached as Attachment C to this Consent Order;
- B. Identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous ~~waste~~substances at or from the Site, by conducting a Corrective Measures Feasibility Study ~~as more specifically set forth in the SOW in Attachment C: Scope of Work to this Consent Order~~;
- ~~C. Determine the appropriate extent of remedial action and implement such remedial action necessary to prevent or mitigate any actual or potential threats to the public health and the environment which may be posed by hazardous substances at or emanating from the Site, including operations and maintenance of any remedial system and monitoring to determine the effectiveness of the remedial action; and~~
- ~~D. Provide for on-site and off-site management of Site soils that may be disturbed in the the payment of past and future in a manner~~ response costs incurred by the DEP.

~~7. The Work conducted under this Consent Order is subject to approval by DEP and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select and implement a remedy that will be consistent with all applicable Maine Statutes, DEP rules, guidance, policies, and procedures, and that is will attain clean up levels protective of public health and the environment.-~~



## ~~V.~~ FINDINGS OF FACT

~~8.~~ [Insert Site History—how hazardous substances came to be located on site, site operations, current status, sampling and investigation by DEP, evidence that site poses a risk or potential risk to public health and the environment. To the extent possible organize it by paragraph in chronological order from past events to more current information. Keep it concise—just the facts you need to demonstrate that the facility meets the definition of an uncontrolled site, the respondents meet the definition of responsible parties and further work is needed. If you have attached a designation, keep it very brief, and reference the designation.]

## VI. DETERMINATIONS OF COMMISSIONER

~~9-25.~~ Based upon the aforementioned data and information contained in the ~~investigations~~ investigation, inspections, sampling, and analyses ~~set forth in Section II the Findings of Fact above,~~ the DEP has determined pursuant to 38 M.R.S. §§ 1304(12), ~~1364, and 1365~~ that:

- A. Actual discharges of hazardous ~~wastes~~ substances into the environment have occurred at the ~~[Insert Site Name] Site in [Insert Town], Maine;~~
- ~~B.~~ Hazardous ~~wastes~~ substances are present in ~~[insert media e.g. groundwater and soil, soil vapor, indoor air, ambient air]~~ at the Site and there is a reasonable basis to believe that the hazardous substances may create a danger to the public health, to the safety of any person, or to the environment;
- ~~C.~~ Under 38 M.R.S. § 1362, ~~[Insert Names of Operators]~~ are responsible parties as operators of the ~~[Insert Site Name] Site, in that [he/she/it/they] operated the site from the time any hazardous substance arrived there.~~
- ~~D.B.~~ Under 38 M.R.S. § 1362, ~~[Insert Owner(s) Name(s)]~~ are responsible parties in that ~~[he/she/it/they] owned the site from the time any hazardous substance arrived there;~~
- ~~E.C.~~ Hazardous ~~wastes~~ substances released at the Site have migrated and may still be migrating into the groundwater, ~~soil,~~ and ~~soil~~ air of the State.
- ~~F.D.~~ The ~~response~~ measures ordered herein are necessary for the purpose of protecting public health and/or the environment.

## VII. AGREEMENT

### ~~VII.~~ ORDER

Based upon the foregoing determinations and facts, and in order to ~~address~~ ~~abate~~ the ~~potential threats posed by~~ conditions at the Site, the Commissioner hereby ~~orders~~ ~~ORDERS AND~~

~~DIRECTS~~, and the Respondent agrees ~~Respondents agree~~ to complete, the following response measures ~~within specified time periods~~:

~~Groundwater [Note: the following paragraphs and SOW are all inclusive, so will need to be modified to fit the scope of the agreement. Is it just for an RI/FS? Has a remedy been selected, and it's only for RA? Only cost recovery?]~~

~~26. Monitoring: Respondent~~ Respondents shall develop a monitoring plan and monitor Site groundwater quality ~~site conditions~~ in accordance with the groundwater monitoring program described in Sections B.2 through B.5 of Appendix B to the 2014 Annual Water Quality Report submitted to DEP on March 4, 2016 or other DEP-approved monitoring plan.

~~10.27. Groundwater Treatment: Respondent shall continue to collect groundwater from the existing groundwater interception trench, treat the collected groundwater for volatile organic compounds (VOCs) in provisions of this Consent Order, the DEP-approved air stripper treatment system installed on TI's property, and discharge the treated groundwater to the City of South Portland waste water treatment facility. The treatment system shall be maintained pursuant the Groundwater Treatment System Operation and Maintenance Manual submitted to DEP on April 15, 2015~~ SOW in Attachment C, and appropriate EPA guidance.

~~28. RCRA Facility Investigation – On-Site Source Area: Respondent shall complete the RFI for SWMU 12 (the On-Site Source Area) in accordance with the RFI workplan entitled RCRA Facility Investigation SWMU-12 Work Plan, Former Fairchild Camera and Instrument Corporation Site, South Portland, Maine, dated August 17, 2011, as amended, attached hereto as Attachment C, and shall submit a report of the results of the On-Site Source Area RFI to DEP (the “On-Site Source Area RFI Report”).~~

~~29. RCRA Facility Investigation – Downgradient Groundwater: Respondent shall complete the RFI for AOC 4 (Downgradient Groundwater) in accordance with the RFI workplan entitled RCRA Facility Investigation Work Plan for Groundwater Collection Trench and Downgradient Groundwater (AOC-4) Former Fairchild Camera and Instrument Corporation Site, South Portland, Maine, dated June 5, 2015, as amended, attached hereto as Attachment D, and shall submit a report of the results of the Downgradient Groundwater RFI to DEP (the “Downgradient Groundwater RFI Report”).~~

~~11. Corrective Measures Study: Respondent will conduct a Corrective Measures Study (“CMS”) that evaluates the corrective action alternative(s) and recommends the corrective measure(s), if any, to be taken with regard to (a) the On-Site Soil, (b) the On-Site Source Area, and (c) Downgradient Groundwater~~ Remedial Investigation and Feasibility Study: Respondents shall conduct a Remedial Investigation and Feasibility Study (“RI/FS”) of the Site in accordance with the provisions of this Consent Order, the SOW in Attachment C, and appropriate EPA guidance.

~~A. The Remedial Investigation (“RI”) will determine the extent of contamination at the site and the risk potentially posed to public health and the environment.~~

~~B.A. The Feasibility Study (“FS”) will evaluate the remedial alternatives to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The Feasibility Study for the Site shall identify the remedial alternatives for Site clean-up, the basis for the selection of these alternatives, and the alternative or combination of alternatives which the Respondents believe is the most appropriate for remediation of the Site to achieve clean-up levels protective of public health and the environment. A report presenting the results of the CMS (the “CMS Report”) shall be submitted to DEP within 270 days of DEP’s approval of the last RFI Report to be submitted to DEP. The FS shall evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.~~

30. Site Soil Management

The following standards shall apply to any Site soil located within SWMU 7 and SWMU 12 that is disturbed as a result of earthwork or excavation at the Site unless and until DEP makes a determination that any such SWMUs require no further action:

- A. On-Site Re-use. Site soil may be reused on-site provided it does not exceed the contaminant levels established pursuant to the Maine RAGS “Leaching to Groundwater” standards.
- B. Off-Site Disposal. Site soil may be sent off-site for disposal at: (1) a hazardous waste disposal facility or (2) at a non-hazardous waste disposal facility provided it meets the acceptance criteria for Maine landfills (i.e., the soils do not exhibit the EPA TCLP Toxicity Characteristic, 40 CFR Part 261.24, Table 1), which represent levels that have been determined by DEP to be safe and appropriate for disposal of contaminated materials in a Subtitle D landfill setting.
- C. Off-Site Re-use. Site soil may be sent off-site for re-use provided it meets the acceptance criteria for a facility licensed by DEP to reuse contaminated materials, which represent levels that have been determined by DEP to be safe and appropriate for reuse of such contaminated materials.

Any Site soils located outside the above-listed SWMUs are subject only to applicable state and local requirements. In the event that evidence (visual or olfactory) of contaminated soil is encountered during an excavation project involving such soils, good customary commercial practices shall be employed to identify and address such environmental conditions, including, as applicable, notification of DEP, appropriate sampling, and appropriate off-site disposal.

~~12.~~ Remedial Alternative Selection:

- A. ~~The DEP will notify the Respondents in writing of its approval or disapproval of the Feasibility Study pursuant to paragraph 18.~~
- B. ~~If the DEP disapproves, pursuant to subparagraph 18.B.iv., the remedial alternative that is preferred by the Respondents, the DEP will identify the remedial action to be undertaken by the Respondents in writing. DEP's decision is subject to the Dispute Resolution provisions in paragraph 31.~~

~~13. Remedial Action Plan: The Respondents shall, within sixty (60) days of receipt of DEP's approval of the Respondents' selection or DEP's identification of the remedial action to be undertaken, submit a Remedial Action Plan (RAP) to implement the remedial action selected in paragraph 12, in a phased design approach as detailed in the SOW. The RD Work Plan shall include the sequencing of activities for the collection of any necessary pre design information prior to the design for each component of the Remedial Action. The RD Work Plan shall achieve the Performance Standards and other requirements set forth in this Consent Order, including the SOW.~~

~~14. RAP Approval: The DEP will notify the Respondents in writing of its approval or disapproval of the RAP pursuant to paragraph 18.~~

~~15. Implementation of Remedial Action Plan: The Respondents shall implement the remedial action in accordance with the plan and schedule set forth in the RAP, as approved or modified by the DEP.~~

~~16-31.~~ Additional Work:

- A. If at any time during the implementation of this Consent ~~Agreement~~Order, the ~~Respondent identifies~~Respondents identify a need for additional data or a change in the scope of work set forth in Paragraphs 26 through 30 (the "Work") in orderSOW to protect public health or the environment or otherwise meet the purposes of this Consent ~~Agreement~~Order as stated in ~~Section~~section ~~VI~~IV, the ~~Respondent~~Respondents shall notify the DEP Project Manager by telephone or email within 24 hours of discovery, and submit a memorandum documenting the need for additional data to the DEP Project Manager within seven (7) days after identification. ~~The DEP may modify or supplement the consent agreement in accordance with this paragraph.~~
- B. In the event of unanticipated or changed ~~circumstances~~circumstance, the DEP reserves the right to require work in addition to that specified in the Work~~SOW~~ if DEP determines that such additional work~~the change~~ is necessary to protect the public health and the environment. In the event that the DEP determines that additional work is necessary, DEP shall notify the ~~Respondent~~Respondents in writing, providing ~~in a written, draft statement of modification to the additional work (the "Additional SOW") or a draft SOW supplement~~ for thirty (30) ~~days~~day review and written comment by the ~~Respondent~~. ~~After an opportunity to meet and discuss Respondent's written comments, the Respondents.~~ The DEP shall

then issue a final Additional SOW ~~modification or supplement~~ to the ~~Respondent~~Respondents.

- C. ~~Respondent~~Respondents shall confirm its willingness to perform the Additional SOW~~Additional Work~~ in writing to DEP within seven (7) days after receipt of the final Additional SOW~~DEP request~~. If ~~Respondent~~Respondents objects to any portion of the final Additional SOW~~modification or supplement~~, the ~~Respondent~~Respondents may seek dispute resolution pursuant to Paragraph 41. ~~The final Additional paragraph 31. The~~ SOW shall be modified in accordance with the final resolution of the dispute.

- D. The ~~Respondent~~Respondents shall, within forty-five (45) days of receipt of the final Additional SOW~~SOW modification or supplement~~, unless an alternative schedule is agreed upon, submit a work plan to complete the additional work. Upon approval of the final Additional SOW work plan, the ~~Respondent~~Respondents shall implement the work plan in accordance with the standards, specifications, and approved schedule contained therein.

~~E. DEP reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.~~

~~F.E.~~ Nothing in this Paragraph shall be construed to limit DEP's authority, if any, to ~~conduct~~require performance of further response actions at the Site.

~~17. Completion of Remedial Action: The Respondents shall continue to implement the remedial action until notified by the DEP pursuant to paragraph 42 that the Respondents' responsibilities under the Consent Order have been satisfied. Prior to DEP notification, the Respondents shall submit for approval a written report demonstrating that cleanup levels protective of public health have been obtained, and will be maintained, as demonstrated by the process established in paragraph 4.D of the SOW, and any subsequent investigations that the DEP requires or undertakes have been completed.~~

#### ~~18.~~32. Submissions Requiring Agency Approval

- A. ~~Respondent~~Respondents shall submit all portions of any plan, report, or other deliverable ~~Respondent is~~Respondents are required to submit pursuant to provisions of this Consent Agreement~~Order~~.
- B. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Agreement~~Order~~, DEP shall:
- i. approve, in whole or in part, the submission;
  - ii. approve the submission upon specified conditions;
  - ~~iii. modify the submission to cure the deficiencies;~~

~~iv.iii.~~ disapprove, in whole or in part, the submission, directing that the ~~Respondent~~Respondents modify the submission; or

~~v.iv.~~ any combination of the above.

- C. In the event of approval ~~or~~, approval upon conditions, ~~or modification by DEP,~~ pursuant to subparagraph ~~33.b.i 3348.B.i.~~ ~~through iv. Respondentv.,~~ Respondents shall proceed to take action required by the plan, report, or other item, as approved ~~or modified~~ by DEP.
- D. Upon receipt of a notice of disapproval pursuant to subparagraph 33.B.iii. Respondent18.B.iv., Respondents shall, within ~~3014~~ days or such other further time as specified by DEP in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the receipt of a notice of disapproval pursuant to subparagraph 33.B.iii, Respondent18.B.iv., Respondents shall proceed, at the direction of DEP, to take any action required by any non-deficient portion of the submission. ~~Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under paragraph 32 (Stipulated Penalties) with respect to the deficient portion.~~
- ~~E. If upon re-submission, a plan, report, or item is disapproved or modified by DEP, Respondents shall be deemed to have failed to submit such a plan, report, or item timely and adequately.~~
- ~~F.E.~~ All plans, reports, and other items required to be submitted to DEP under this Consent AgreementOrder shall, upon approval or modification by DEP, be enforceable under this Consent AgreementOrder. In the event DEP approves ~~or~~, conditions ~~or modifies~~ a portion of a plan, report, or other item required to be submitted to DEP under this Consent AgreementOrder, the approved ~~or~~, conditioned ~~or modified~~ portion shall be enforceable under this Consent AgreementOrder.

~~19. Reimbursement of Response Costs:~~

- ~~A. Past Response Costs: Within thirty (30) days of the effective date of this Consent Order, the Respondents shall make payment to the DEP in the amount of [Insert amount of Past Costs] payable to the Maine Uncontrolled Sites Fund, for all costs, including administrative and enforcement costs paid by the DEP from [Insert Date] until [Insert Date]. Payment in the form of a certified check payable to the Maine Uncontrolled Sites Fund shall be forwarded to:~~

~~David Wright, Division Director  
Maine Department of Environmental Protection  
Bureau of Hazardous Materials and Waste Management  
Division of Remediation  
17 State House Station  
Augusta, Maine 04333-0017~~

- ~~B. The Respondents shall also reimburse the DEP through the Maine Uncontrolled Sites Fund for any response or oversight costs incurred by the DEP since [Insert Second Date Above] including overseeing and reviewing the work conducted by the Respondents that is required by this Consent Order. Annually, beginning on [Insert Date] and on or before [Insert Date] of each subsequent year up to the time when DEP certifies that the Remedial Action Plan (RAP) is complete pursuant to paragraph 42, DEP shall submit to the Respondent's Project Coordinator an itemized statement of oversight costs, along with the summaries supporting such costs incurred by the State of Maine. On or before [Insert Date] of each year that DEP has submitted a statement of oversight costs, Respondents shall submit a check(s) for the amount of those outstanding costs. Checks reimbursing DEP costs shall be made payable to the Maine Uncontrolled Sites Fund and forwarded to the address listed in the preceding paragraph. A photocopy of the check shall also be forwarded.~~

- ~~C. In the event that the payments required by subparagraph 19.A are not made on or before [Insert Date], or the payments required by subparagraph 19.B are not made within sixty (60) days of the Respondents' receipt of the itemized statement, then Respondents shall pay interest on the unpaid balance at the prime rate of interest plus 4%. The interest to be paid on past response costs pursuant to subparagraph 19.A shall begin on [Insert Date] 60 days after demand by the Commissioner. The interest on all other response or oversight costs shall begin to accrue sixty (60) days after the Respondents' receipt of those statements. Interest shall accrue through the date of the Respondents' payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the DEP by virtue of Respondents' failure to make timely payments under this paragraph.~~

~~20. Assurance of Ability to Complete Work:~~

- A. ~~Within thirty (30) days of approval of the RAP by the DEP, the Respondents shall establish and maintain financial security in the amount at least equal to the estimated total remedial action costs, including but not limited to, cleanup and monitoring costs in one of the following forms:~~
- i. ~~A surety bond guaranteeing performance of the response measures;~~
  - ii. ~~One or more irrevocable letters of credit equaling the total estimated cost of the response measures;~~
  - iii. ~~A trust fund;~~
  - iv. ~~A guarantee to perform the response measures by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Respondents.~~
  - v. ~~A demonstration that the Respondents satisfy the requirements of 40 C.F.R. pt. 264.143(f); or~~
  - vi. ~~A combination of the above that is acceptable to the DEP.~~
- B. ~~In the event that DEP determines at any time that the financial assurances provided pursuant to this paragraph are inadequate, Respondents shall, within thirty (30) days of receipt of notice of DEP's determination, obtain and present to DEP for approval one of the other forms of financial assurance listed in paragraph 20.A of this Consent Order. The Respondents' inability to demonstrate financial ability to complete the response measures shall not excuse performance of any activities required under this Consent Order.~~
- C. ~~The total amount of the financial assurance, as determined in paragraph 20.A, shall be reduced to reflect the remedial measures completed and those necessary to complete compliance with this Consent Order.~~

#### **VIII. ADDITIONAL AGREEMENTS BY THE PARTIES**

In consenting to the terms of this Consent ~~Agreement~~Order the Parties hereby acknowledge and agree to the following:

~~21-33.~~ Contractor Qualifications: All work performed by the ~~Respondent~~Respondents pursuant to this Consent ~~Agreement~~Order shall be under the direction and supervision of a qualified professional engineer or a Maine certified geologist approved by DEP and with expertise in hazardous waste site investigation and cleanup. Within fifteen (15) working days of the effective date of this Consent ~~Agreement~~Order or the retention of such persons, the ~~Respondent~~Respondents shall provide written notice to the DEP of the identity and qualifications of such engineer or geologist and of any contractors to be used in carrying out the terms of this Consent ~~Agreement~~Order. The ~~Respondent~~Respondents may designate new contractors or other new persons performing work under this Consent ~~Agreement~~Order provided they meet the above mentioned qualifications and the



~~Respondent~~~~Respondents~~ notify DEP in writing within seven (7) days after retaining such persons. The ~~Respondent~~~~Respondents~~ shall execute an agreement with those contractors they hire for purposes of implementing this Consent ~~Agreement~~~~Order~~ requiring any such contractors to notify the DEP of the employment of any subcontractors in carrying out the terms of this agreement within seven (7) days of retaining those subcontractors.

- A. ~~Respondent has~~~~if contractors have already been selected by the Respondents,~~  
~~add:} Respondents have~~ retained ~~Sevee & Maher Engineering, Inc., {name of~~  
~~company},~~ whose principal place of business is ~~4 Blanchard Road, Cumberland~~  
~~Center, ME 04021 {address}~~ to undertake the work in this Consent  
~~Agreement~~~~Order~~. The qualified ~~{professional engineer /~~~~Maine Certified~~  
~~Geologist}~~ is ~~\_\_\_\_\_. {name}~~. DEP agrees that this person and firm are  
qualified to undertake the work in this Consent ~~Agreement~~~~Order~~.

~~22.~~34. ~~Notice to Contractors:~~ Within thirty (30) days of the effective date of this Consent  
~~Agreement~~~~Order~~, or at the date of retention of such person, whichever is later, the  
~~Respondent~~~~Respondents~~ shall provide a copy of this Consent ~~Agreement~~~~Order~~ to all  
contractors, analytical laboratories, and consultants retained to conduct any portion of the  
work performed pursuant to this Consent ~~Agreement~~~~Order~~. Within thirty (30) days of the  
effective date of this Consent ~~Agreement~~~~Order~~, or date of retention, whichever is later,  
the ~~Respondent~~~~Respondents~~ shall enter into agreements requiring the foregoing  
contractors, laboratories and consultants to provide a copy of this Consent  
~~Agreement~~~~Order~~ to any subcontractors that such contractors, laboratories or consultants  
may retain.

~~23. Progress Reports:~~ Upon written approval of the RAP by the DEP and throughout the  
remedial action, including monitoring, the Respondents shall provide to the DEP  
quarterly, or on an otherwise mutually agreed upon periodic basis, a written progress  
report for each preceding period. These reports shall be submitted within thirty (30) days  
of the end of such period. ~~The DEP reserves the right to require additional information or~~  
~~detail as it deems necessary and appropriate. At a minimum, these progress reports shall:~~

- A. ~~Describe in detail the actions that have been taken toward achieving compliance~~  
~~with this Consent Order during the past period;~~
- B. ~~Include all results of sampling and tests received by the Respondents during the~~  
~~past period;~~
- C. ~~Include all plans and procedures completed or partially completed during the past~~  
~~period; and~~
- D. ~~Describe actions, data and plans which are scheduled for the next period.~~

~~24. Transfer of Treatment Equipment or Property:~~ Prior to issuance of a certificate of  
completion or termination pursuant to paragraph 42, the Respondents shall not transfer,  
remove or allow the removal of any treatment system, including structures and equipment  
or any portions thereof, installed pursuant to the RAP, without the prior written approval  
of the Commissioner, except for the purposes of maintenance or service thereof.

~~"Transfer" includes the sale or lease of any portion of any treatment system facility or property or treatment equipment.~~

~~25. Assumption of Risk: For the purposes of this Consent Order, the Respondents shall assume any and all liability arising from or relating to their acts or omissions in the performance of the remedial work set forth herein or their failure to perform fully or to complete the requirements of this Consent Order.~~

~~26.35. Permits: The Respondent~~~~Respondents~~ shall obtain all necessary local, state and federal permits, if any, for implementation of the actions required in this Consent ~~Agreement~~~~Order~~. The ~~Respondent~~~~Respondents~~ will use best efforts to assure that all permits necessary for completion of the activities required by this Consent ~~Agreement~~~~Order~~ are applied for in a timely fashion, and the DEP will undertake its best efforts to assist in the issuance of any necessary state permits. The ~~Respondent~~~~Respondents~~ shall notify the DEP within ten (10) working days of any written denial of the ~~Respondent's~~~~Respondents'~~ application for such permit or permits.

~~27.36. Access: DEP and/or its authorized representatives shall have authority to enter, at all reasonable times, the Site and any other property to which access is required for the implementation of this Consent Agreement~~~~Order~~ to the extent access to the property is controlled by the Respondents for the purposes of, *inter alia*: monitoring the remedial action; verifying, inspecting and copying records, documents, operating logs, contracts, and other documents related to this Consent ~~Agreement~~~~Order~~; conducting tests or sampling; and reviewing the progress of the Respondents in carrying out the terms of this Consent ~~Agreement~~~~Order~~. To the extent that the Site or any other property to which access is required for the implementation of this Consent ~~Agreement~~~~Order~~ is owned or controlled by persons other than the ~~Respondent, Respondent~~~~Respondents, the Respondents~~ shall use reasonable good faith~~their best~~ efforts to secure from such persons access for the ~~Respondent~~~~Respondents~~, as well as for the DEP and its representatives. In the event that Respondent is unable to secure access from such persons, despite the use of reasonable good faith efforts, DEP agrees to use its authority under applicable law to secure access on behalf of Respondent as DEP's agent.

~~28.37. Document Preservation: The Respondent agrees~~~~Respondents agree~~ to preserve for a minimum of five (5) years after Satisfaction and Termination pursuant to paragraph ~~50.42~~, all records and documents in ~~its~~~~their~~ possession or in the possession of ~~its~~~~their~~ divisions or employees relating to the activities undertaken pursuant to this Consent ~~Agreement~~~~Order~~, despite any document retention policy to the contrary. Nothing in this Consent ~~Agreement~~~~Order~~ shall constitute any waiver of privilege that may otherwise attach to any such records or documents.

~~29.38. Creation of Danger: In the event that the DEP determines that Site activities create an actual danger to public health, safety or the environment, DEP may order the Respondent~~~~Respondents~~ to stop further implementation of this Consent ~~Agreement~~~~Order~~ for such period of time as needed to abate the danger. DEP may issue such an order regardless of whether the endangering activity or circumstances: are in compliance or non-compliance with this Consent ~~Agreement~~~~Order~~; are caused by circumstances

contemplated or not contemplated in this Consent ~~Agreement~~Order; or are occurring on or off the Site. During the period of time that the DEP orders the ~~Respondent~~Respondents to stop implementation of this Consent ~~Agreement~~Order, the ~~Respondent~~Respondents obligations pursuant to this Consent ~~Agreement~~Order shall be suspended and, in the event that such a delay was not caused by the negligent or noncompliant acts or omissions of the ~~Respondent~~Respondents, the time schedule for implementation shall be extended until the order is modified or revoked to allow further implementation.

~~30.39.~~ Other Laws: All actions taken pursuant to this Consent ~~Agreement~~Order shall be undertaken in accordance with the requirements of all applicable local, ~~state~~State and ~~federal~~Federal laws and regulations and applicable ~~state~~State and ~~federal~~Federal environmental and public health standards.

~~31.40.~~ Dispute Resolution:

- A. Unless otherwise expressly provided for in this Consent ~~Agreement~~Order, the dispute resolution procedures of this ~~Paragraph~~paragraph shall be the exclusive mechanism for resolving disputes arising under this Consent ~~Agreement~~Order. The Parties shall attempt to resolve any disagreements concerning this Consent ~~Agreement~~Order expeditiously and informally.
- B. ~~-If Respondent objects~~ Respondents object to any DEP action taken pursuant to this Consent ~~Agreement~~Order and the objections cannot be resolved informally:
  - i. The ~~Respondent~~Respondents shall notify DEP's Director of the Division of Remediation in writing of its objection(s) within ~~15 (fifteen)~~5 (five) days after such action. DEP and ~~Respondent~~Respondents shall have ~~30 (thirty)~~14 (fourteen) days from DEP's receipt of Respondent's written objection(s) to resolve the dispute (the ~~"Negotiation Period"~~"). The Negotiation Period may be extended at the sole discretion of DEP. Such extension may be granted verbally but shall be confirmed in writing. Any agreement reached by the Parties pursuant to this Section shall be in the form of a written Dispute Decision document and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Consent ~~Agreement~~Order.
  - ii. If the Parties are unable to reach an agreement within the Negotiation Period, the ~~Respondent~~Respondents shall, within 5 days of the end of the Negotiation Period, notify DEP's Director of the Bureau of Remediation and Waste Management ("BRWM") of the dispute. The Director of BRWM, or a higher DEP Official, will issue a written Dispute Decision document within thirty (30) days, which shall upon signature be incorporated into and become an enforceable part of this Consent ~~Agreement~~Order.

- C. Respondent's obligations under this Consent ~~Agreement~~Order shall not be tolled by submission of any objection for dispute resolution under this Section unless specifically determined otherwise in the Dispute Decision document. Following resolution of the dispute, as provided by this Section, ~~Respondent~~Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the Dispute Decision document, regardless of whether the Parties agree with the decision. Notwithstanding anything to contrary herein, Respondent reserves its right to appeal a Dispute Decision issued by the DEP to Superior Court.

~~32. Stipulated Penalties:~~

- A. ~~The Respondents shall be liable to the State of Maine for stipulated penalties in the amounts set forth in the following paragraphs for failure to comply with the requirements of this Consent Order. "Compliance" by the Respondents shall include completion of the activities under this Consent Order or any implementation schedule, work plan, or other plan approved under the Consent Order in accordance with all applicable requirements of law, this Consent Order, and any plans or other documents approved by DEP pursuant to this Consent Order.~~
- B. ~~The following stipulated penalties shall be payable per violation per day to the State of Maine for any noncompliance:~~

<u>Period of Noncompliance</u>	<u>Penalty/Violation/Day</u>
1st through 7th day	\$ 1,000
8th through 14th day	\$ 2,000
15th through 30th day	\$ 3,000
31st through 59th day	\$ 7,500
60th day and beyond	\$ 10,000

- C. ~~All penalties shall begin to accrue on the day after the complete performance is due or the day the violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.~~
- D. ~~Following DEP's determination that the Respondents have failed to comply with a requirement of this Consent Order, DEP shall give the Respondents written notification of the same and describe the noncompliance. DEP may send the Respondents a written demand for the payment of the penalties; however, penalties shall accrue regardless of whether DEP has notified the Respondents of a violation of this Consent Order.~~

- E. ~~All penalties owed to the State of Maine under this section shall be due and payable within 60 days of the Respondents' receipt from DEP of a demand for payment of the penalties. All payments under this section shall be paid by certified check made payable to the "Uncontrolled Sites Fund" and shall be mailed to the address listed in paragraph 39. A photocopy of the check shall be included.~~
- F. ~~The payment of penalties shall not alter in any way the Respondents' obligation to complete the performance of the action required under this Consent Order.~~
- G. ~~If the Respondents fail to pay stipulated penalties when due, the DEP may institute proceedings to collect the penalties, as well as interest. The Respondents shall pay interest on the unpaid balance, which shall begin to accrue on the date of the DEP's notice of violation described below, at a rate of the prime interest rate plus 4%.~~
- H. ~~Nothing in this Consent Order shall be construed as prohibiting, altering, or in any way limiting the ability of the DEP to seek any other remedies or sanctions available by virtue of Respondents' violation of this Consent Order or of the statutes and regulations upon which it is based.~~
- I. ~~No payments made under this section shall be tax deductible for State tax purposes.~~

33. ~~Penalties, Payments, and Expenditures: No payments or expenditures made in accordance with this Consent Order, other than payments pursuant to paragraph 32 (Stipulated Penalties), shall be deemed a penalty.~~

34. Covenants Not To Sue By State of Maine:

- A. In consideration of the actions that will be performed ~~and the payments that will be made by the Respondent~~ Respondents under the terms of this Consent ~~Agreement~~ Order, and except as specifically provided in subparagraphs ~~BB, C, E, D,~~ and ~~DE~~ of this ~~Paragraph~~ paragraph, the State of Maine covenants not to sue or to take administrative action against the ~~Respondent~~ Respondents pursuant to ~~38 M.R.S. §§ 1365, 1367, for performance of the work set forth in Paragraphs 26 through 30.~~ remedial actions at the Site described herein and for recovery of past response costs or oversight costs described herein. These covenants not to sue shall take effect upon the effective date of this Consent Agreement and shall remain in effect so long as Respondent undertakes its receipt by DEP of the payments required by paragraph 19 (Reimbursement of Response Costs), and in addition, upon the complete and satisfactory performance by the Respondents of all their obligations under this Consent ~~Agreement~~ Order, whichever is later. These covenants not to sue extend only to the ~~Respondent~~ Respondents and do not extend to any other person.
- B. ~~Notwithstanding any other provision of this Consent Order, the State of Maine reserves, and this Consent Order is without prejudice to, the right to institute~~

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proceedings in this action or in a new action, or to issue an Administrative Order seeking to compel the Respondents (1) to perform further response actions relating to the Site, or (2) to reimburse the DEP for additional costs of response if, prior to certification of completion of the remedial action:

- i. ~~conditions at the Site, previously unknown to DEP are discovered, or;~~
- ii. ~~information, previously unknown to DEP, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the remedial action contained herein is not protective of public health or the environment.~~

~~C.B.~~ General Reservations of Rights: The State of Maine reserves, and this Consent ~~Agreement~~Order is without prejudice to, all rights against ~~Respondent~~any and all Respondents with respect to all other matters, including but not limited to the following:

- i. claims based on a failure by the ~~Respondent~~Respondents to meet a requirement of this Consent ~~Agreement~~Order;
- ii. liability arising from the past, present, or future disposal, release, or threat of release of wastes or hazardous substances other than at the Site;
- iii. liability for damages for injury to destruction of, or loss of natural resources;
- iv. criminal liability;
- v. liability for violations of federal or state law which occur during or after implementation of the remedial action contained in this Consent Agreement~~Order~~.

~~D.C.~~ In the event DEP determines that the ~~Respondent has~~Respondents have failed to implement any of the ~~response~~remedial actions contained in this Consent ~~Agreement~~Order in an adequate or timely manner, DEP may perform any and all portions of the ~~response actions~~remedial action as DEP determines necessary. ~~Respondents may invoke~~ Costs incurred by the ~~procedures set forth~~ DEP in Paragraph 41 (Dispute Resolution)~~performing the remedial action pursuant to dispute~~ DEP's determinationthis paragraph shall be considered future Response and/or Oversight Costs that performance of any response actions by DEP is warranted under this subparagraph 42(D).~~the Respondents shall pay pursuant to paragraph 19.B (DEP Response Costs).~~

~~E.D.~~ Notwithstanding any other provisions of this Consent Agreement~~Order~~, DEP retains all authority and reserves all its rights to take any and all response actions authorized by law.

35-42. Contribution Protection: The Parties agree that this ~~Consent Settlement~~ Agreement constitutes an administrative settlement for purposes of 38 ~~M.R.S.~~ ~~MRSA~~ §348(4) , and that the ~~Respondent is~~ ~~Respondents are~~ entitled, as of the Effective Date, to protection from contribution actions as set forth in the above-referenced statute, provided the ~~Respondent is~~ ~~Respondents are~~ implementing or ~~has~~ ~~have~~ fully implemented this Consent ~~Agreement~~ ~~Order~~.

36-43. Other Claims: Nothing herein releases or is intended to release any claims, causes of action or demands in law or equity of the State of Maine or DEP, against any person, firm, partnership, entity or corporation that is not a signatory to this Consent ~~Agreement~~ ~~Order~~ for any liability that may arise or may have arisen out of or relating in any way to the generation, storage, treatment, handling, transportation, or disposal of any materials, wastes or hazardous substances at, to, or from the Site. This Consent ~~Agreement~~ ~~Order~~ shall not limit any legal or equitable claims by the State of Maine against ~~Respondent~~ ~~any of the Respondents~~ related to releases of ~~wastes or~~ hazardous substances or other pollutants, except as provided in ~~Paragraph 42~~ ~~paragraph 34~~ (Covenants Not to Sue).

37-44. Hold Harmless Agreement: The DEP shall not be liable for any injuries or damage to persons or property resulting from acts or omissions of the ~~Respondent~~ ~~Respondents~~ in carrying out activities pursuant to this Consent ~~Agreement~~ ~~Order~~ nor shall the DEP be held as party to any contract entered into by the ~~Respondent~~ ~~Respondents~~ in carrying out the activities pursuant to this Consent ~~Agreement~~ ~~Order~~. The ~~Respondent~~ ~~agrees~~ ~~Respondents agree~~ to indemnify and save and hold harmless the DEP, its agents, and its employees from any and all claims or causes of actions against the DEP arising from or on account of acts or omissions of the ~~Respondent, and its~~ ~~Respondents, their~~ officers, employees, agents, or contractors in carrying out the activities pursuant to this Consent ~~Agreement~~ ~~Order~~, providing that the ~~Respondent~~ ~~Respondents~~ shall not owe the DEP any such obligation in the event of a citizen's suit to enforce any environmental law, regulation, or common law duty or in the event that DEP has been negligent, within the meaning of 14 M.R.S. § 8101.

38-45. Designation of Coordinators: Within ten (10) working days of the effective date of this Consent ~~Agreement~~ ~~Order~~, the ~~Respondent~~ ~~Respondents~~ shall designate a coordinator who shall administer all actions called for by this Consent ~~Agreement~~ ~~Order~~ and the ~~Respondent~~ ~~Respondents~~ shall submit the coordinator's name and address to the DEP. The DEP, shall, during the same time period, designate a coordinator for administration of its responsibilities and shall submit the coordinator's name and address to the ~~Respondent~~ ~~Respondents~~. Different coordinators may be designated by any of the Parties provided that notice of such designation is made to the other Parties in accordance with this ~~Paragraph~~ ~~paragraph~~ within ten (10) working days of the designation.

39-46. Notice: All notices required pursuant to this Consent ~~Agreement~~ ~~Order~~ shall be deemed to have been made three (3) days from the mailing of a certified letter, return receipt requested, or receipted express delivery to the following persons:

For DEP:

David Wright, Director  
Division of Remediation  
Bureau of Remediation & Waste Management  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

~~[Insert Name]~~, Remedial Project Coordinator  
Former Fairchild Camera and Instrument Company Site  
~~[Insert Site Name] Site~~  
Bureau of Remediation & Waste Management  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

For ~~Respondent~~Respondents:

Joe Bauer  
Texas Instruments Incorporated  
13350 TI Boulevard, MS 329  
PO Box 75243, MS 329  
Dallas, TX 75243

~~[Insert Names and Addresses of the Respondents Designated Coordinators]~~

By signing and consenting to this order, the ~~Respondent~~Respondents hereby ~~acknowledges~~acknowledge and ~~accepts~~accept service of this order. The ~~Respondent~~Respondents further ~~waives~~waive service requirements of this order pursuant to 38 M.R.S. § 1304(12)(C) and the Maine Rules of Civil Procedure and ~~waives~~waive any defenses for inadequacy of service. The ~~Respondent~~Respondents hereby ~~agrees~~agree and ~~consent~~consent to service of this order and future amendments of this order by delivery as required by this Paragraph 47~~U.S. Mail~~ addressed to the above.



~~40-47.~~ Conflicts between Attachments: In the event of a conflict between any provision of this ~~ConsentSettlement~~ Agreement and the provisions of any document attached to this ~~ConsentSettlement~~ Agreement or submitted or approved pursuant to this ~~ConsentSettlement~~ Agreement, the provisions of this ~~ConsentSettlement~~ Agreement shall control. The following documents are attached to and incorporated into this ~~ConsentSettlement~~ Agreement:

Attachment A: Site Designation

Attachment B: Site Map

Attachment C: RFI Workplan – SWMU 12

Attachment D: RFI Workplan – AOC 4

48. Integration: This Consent Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Agreement and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein, including the 1983 Consent Agreement, as amended in 1985 and 1986. Other than submissions that are subsequently submitted and approved by DEP pursuant to this Consent Agreement, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Agreement or the settlement it represents, nor shall it be used in construing the terms of this Consent Agreement.

~~Attachment C: Scope of Work~~

~~41.~~ Subsequent Amendments and Incorporation:

A. ~~Amendments:~~ This Consent ~~AgreementOrder~~ may be amended by agreement of DEP and the ~~RespondentRespondents~~. Such amendment shall be in writing and shall be signed by ~~theall~~ Parties to this Consent ~~AgreementOrder~~. Such amendments shall have as their effective date the date on which they are signed by the Attorney General's Office.

~~B. Incorporation: Any reports, plans, specifications, schedules or other items or portions thereof required by this Consent Order are, upon approval or modification by the DEP, incorporated into this Consent Order. Modifications to the RAP in accordance with paragraph 16 or paragraph 4.C of the SOW are, upon approval or modification by the DEP, incorporated into this Consent Order.~~

~~42-49.~~ Satisfaction and Termination: Upon completion of the activities set forth in this Consent ~~AgreementOrder~~, the ~~RespondentRespondents~~ shall promptly notify the DEP. The DEP shall then assess the activities and if the activities have been performed in accordance with the approved plans, shall certify to the ~~RespondentRespondents~~ in writing that ~~its~~their responsibilities under this Consent ~~AgreementOrder~~ have been satisfied in accordance with this Consent ~~AgreementOrder~~.

|

IT IS SO ORDERED

\_\_\_\_\_

[insert name] Commissioner

Maine Department of Environmental Protection

\_\_\_\_\_

Date

|

SEEN AND AGREED TO:

FOR THE RESPONDENT~~RESPONDENTS~~:

\_\_\_\_\_  
[insert Name, Title]

\_\_\_\_\_  
Date

On behalf of Texas Instruments Incorporated~~[Insert Name of Company A]~~

\_\_\_\_\_  
[insert Name, Title] Date

On behalf of [Insert Name of Company B]

\_\_\_\_\_  
[insert Name, Title] Date

On behalf of [Insert Name of Company C]

FOR THE MAINE OFFICE OF THE ATTORNEY GENERAL

\_\_\_\_\_  
[insert Name], Assistant Attorney General  
Maine Attorney General's Office

\_\_\_\_\_  
Date

|

Attachment A: Site Designation

A certain lot or parcel of land located on the easterly sideline of Western Avenue in the City of South Portland, Cumberland County, Maine, bounded and described as follows:

Beginning at a 6-inch by 6-inch granite monument found marking the easterly sideline of said Western Avenue and the northerly sideline of Foden Road (formerly Circus Time Road) and further delineated as the most southerly point of Lot 26 as shown on a plan entitled Greater Portland Building Fund (Airport Industrial Park), dated May 24, 1976 and recorded in Plan Book 113, Page 58 of the Cumberland County Registry of Deeds;

Thence, North 25°51'57" West along Western Avenue, 1063.24 feet to a granite monument marking land now or formerly of Norris J. and Robert Bendetson as described in Book 5089, Page 114;

Thence, North 65°27'14" East, along said Bendetson, 300.18 feet to a 5/8-inch rebar;

Thence, North 25°57'34" West, along said Bendetson, 302.26 feet to a point on the southerly side of land now or formerly of L.A. Marshall Co. as described in Book 4880, Page 260 and Book 8489, Page 191;

Thence, North 64°10'49" East, along said Marshall Co., 611.00 feet to a 3/4-inch iron pipe found marking the remaining land of the City of South Portland as described in book 3513, Page 300;

Thence, South 68°13'11" East, along said South Portland, 170.09 feet to a 3/4-inch iron pipe found;

Thence, North 25°51'00" West, along said South Portland, 87.32 feet to a 3/4-inch iron pipe found marking land of the City of Portland as described in Book 3007, Page 617;

Thence, South 68°15'46" East, along said Portland land, 66.01 feet to a 5/8-inch rebar to be set;

Thence, South 25°54'36" East, through land of the Grantor, 286.89 feet to a railroad spike to be set;

Thence, South 64°05'24" West, through land of the Grantor, 94.66 feet to a railroad spike to be set;

Thence, South 25°54'36" East, through land of the Grantor, 106.25 feet to a railroad spike to be set;

Thence, South 64°05'24" West, through land of the Grantor 86.66 feet to a railroad spike to be set;

Thence, South 25°47'40" East, through land of the Grantor 229.53 feet to a railroad spike to be set;



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

Thence South 64°05'24" West, through land of the Grantor, 331.27 feet to a railroad spike to be set marking the westerly sideline of the Magnolia Pipe Line Co., easement as defined by this survey;

Thence, South 26°06'48" East, through land of the Grantor and parallel to the line of Building Number 3, 25.48 feet to a railroad spike to be set;

Thence, South 31°44'42" East, through land of the Grantor, 55.68 feet to a railroad spike to be set on the centerline of said pipe line easement;

Thence, South 07°51'55" East, through land of the Grantor and said centerline of pipe line easement, 38.15 feet to a railroad spike to be set;

Thence, South 82°08'05" West, through land of the grantor and perpendicular to said pipe line easement, 20.00 feet to a railroad spike to be set;

Thence, South 07°51'55" East, through land of the Grantor and along the westerly sideline of said pipe line easement, 200.20 feet to a railroad spike to be set;

Thence, South 09°21'11" East, through land of the Grantor and along the westerly sideline of said pipeline easement, 95.98 feet to a railroad spike to be set;

Thence, South 22°01'55" West, through land of the Grantor, 195.27 feet to a 5/8-inch rebar to be set;

Thence, South 25°54'36" East, through land of the Grantor, 129.17 feet to a 5/8-inch rebar to be set on the northerly sideline of Foden Road;

Thence, South 64°12'00" West, along said Foden Road, 298.31 feet to the point of beginning.

The above described parcel is further referenced by a plan to be recorded herewith and entitled "National Semiconductor Corp., South Poland, Maine, Standard Boundary Survey-Property Division-National Semiconductor Corp., 333 Western Avenue, South Portland, Maine" dated December 23, 1996 by OEST Associates, Inc. of South Portland, Maine.

[Insert Letterhead]



Attachment B: Site Map

Draft

Draft

Attachment **C: RFI Workplan – On-Site Source Areas (SWMU 12)**

~~C: Scope of Work~~ *Plan for RCRA Facility Investigation of SWMU-12, Fairchild Semiconductor Site, South Portland, Maine, dated August 17, 2011.*

1. Letter from Heather Jackson (DEP) to Chris Lee (NSC) re *MEDEP Comments on RFI SWMU-12 Work Plan and Approval*, dated September 13, 2011.
2. E-mail from Erik Clapp (SME) to Heather Jackson (DEP) re *SWMU-12 RFI Work Plan*, dated October 11, 2011.
3. Letter from Erik Clapp to Heather Jackson (DEP) re *Interim Report – Results of SWMU-12 Phase I, RFI, Fairchild Semiconductor Site, South Portland, Maine*, dated August 13, 2012.
4. Letter from Heather Jackson (DEP) to Joe Bauer (TI) re *MEDEP Comments on Interim Report - Results of SWMU-12 Phase I, RFI*, dated November 15, 2012.
5. Letter from Erik Class to Harold Nilsson (DEP) re *Response to MEDEP Comments on Interim Report - Results of SWMU-12 Phase I, RFI*, dated October 16, 2013.
6. Letter from Harold Nilsson (DEP) to Erik Clapp (SME) re *Review of Responses to DEP comments, Interim Report - Results of SWMU-12 Phase I, RFI*, December 17, 2013.
7. Letter from Erik Clapp (SME) to Harold Nilsson (DEP) re *Response to MEDEP Comments on Interim Report - Results of SWMU-12 Phase I RFI*, dated December 19, 2013.
8. Letter from Erik Clapp (SME) to Harold Nilsson (DEP) re *Results of SWMU-12, Phase 2, RFI*, dated May 23, 2016.

**Attachment D: RFI Workplan – Downgradient Groundwater (AOC 4)**

1. RCRA Facility Investigation Work Plan for Groundwater Collection Trench and Downgradient Groundwater (AOC-4) Former Fairchild Camera and Instrument Corporation Site, South Portland, Maine, dated June 5, 2015.
  2. Letter from Harold D. Nilsson (DEP) to Eric Clapp (SME) re Fairchild/TI Work Plan for Groundwater Collection Trench and Downgradient Groundwater (AOC-4), June 2015, dated July 23, 2015.
  3. Letter from Eric Clapp (SME) to Harold Nilsson (DEP) re Response to MEDEP Comments on AOC-4 Work Plan, dated September 1, 2015
  4. Letter from Harold D. Nilsson (DEP) to Eric Clapp (SME) re Fairchild AOC-4 Work Plan, dated October 21, 2015.
1. ~~**Sampling and Monitoring Plan.** Within ninety (90) days from the effective date of this Consent Order, the Respondents shall submit a draft Sampling and Monitoring Plan for review and approval by DEP. After written approval or modification of the Work Plan by DEP, the Respondents shall initiate the monitoring plan according to the Monitoring Work Plan and the schedule incorporated therein.~~
- A. ~~The plan shall include sampling of appropriate media at and around the Site to:~~
- i. ~~document changes in magnitude and extent of contamination;~~
  - ii. ~~determine the effectiveness of the remedial action;~~
  - iii. ~~document completion of the remedial action; and~~
  - iv. ~~determine whether other action is necessary to protect public health and the environment.~~
- B. ~~The plan shall also include:~~
- i. ~~A Quality Assurance Plan to ensure that the data provided is representative of site conditions, accurate, and of sufficient quality to make risk based management decisions at the site. The plan shall include or incorporate by reference technical descriptions of sampling and analytical procedures and procedures for quality assurance and quality control. Respondents shall follow, as appropriate, “Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as~~

~~guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with 06-096 CMR Chapter 263, Maine Comprehensive and Limited Environmental Laboratory Certification Rules;~~

- ~~ii. A Health and Safety Plan that ensures that workers and the public are not exposed to unhealthy contaminants at the site during response actions, and that meets all federal and state standards for worker safety. All personnel conducting field visits to areas of potential contamination shall be OSHA certified to work on hazardous substance sites. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Pt. 1910.~~

C. ~~The following provisions must also be included in the Sampling and Monitoring Plan:~~

- ~~i. Splits: The Respondents shall allow for split, replicate, or duplicate samples to be taken by the DEP and/or their authorized representatives of any samples collected by the Respondents pursuant to the implementation of this Consent Order.~~
- ~~ii. Notification: The Respondents shall notify the DEP not less than thirty (30) days in advance of any sample collection activity unless the DEP waives this requirement. Not less than fifteen (15) days in advance of sample collection, the Respondents shall notify the DEP of the sampling date, sampling media, and numbers of samples from each medium unless the DEP specifies a different time period or waives this requirement.~~
- ~~iii. Data Disclosure: If requested by DEP, the Respondents shall promptly make available to the DEP results of any sampling, tests, or other data generated in the course of implementation of this Consent Order.~~

D. ~~The Monitoring Plan shall be reviewed at least annually, and modified from time to time as the Conceptual Site Model is refined and site conditions change.~~

2. ~~Remedial Investigation:~~

- A. ~~Within ninety (90) days from the effective date of this Consent Order, the Respondents shall submit a Remedial Investigation Work Plan including a~~

proposed schedule for implementing the Work Plan to the DEP for review and approval in accordance with paragraph 18 of the Consent Order.

B. ~~After approval of the Work Plan by DEP, the Respondents shall initiate the approved Remedial Investigation Work Plan according to the conditions and the schedule incorporated therein.~~

C. ~~The Remedial Investigation ("RI") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Remedial Investigation for the Site shall be developed in accordance with the following Guidelines:~~

- i. ~~"Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance") (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance); and~~
- ii. ~~"Guidance for Data Usability in Risk Assessment (Part B)."~~
- iii. ~~[add any other guidelines that are necessary/appropriate]~~

D. ~~To determine clean up levels protective of public health,~~

- i. ~~Risk Evaluation: The Respondents shall compare the exposure point concentrations of hazardous substances at the Site to the Maine Remedial Action Guidelines for Sites Contaminated with Hazardous Substances ("RAGS"); or at the Respondent's discretion.~~
- ii. ~~Risk Assessment: Conduct a Risk Assessment in accordance with the DEP's Guidance Manual for Human Health Risk Assessment at Hazardous Substance Sites.~~

3. ~~**Feasibility Study:** Within ninety (90) days from the effective date of this Consent Order, the Respondents shall submit a Feasibility Study Work Plan including a proposed schedule for implementing the Work Plan to the DEP for review and approval in accordance with paragraph 18 of the Consent Order.~~

A. ~~After approval of the Work Plan by DEP, the Respondents shall initiate the approved Remedial Investigation Work Plan according to the conditions and the schedule incorporated therein.~~

B. ~~The Feasibility Study shall include:~~

Scope of Work

- i. ~~A review of the applicable remedial technologies, including innovative technologies, that could be used to attain clean up levels protective of public health and the environment. The alternatives evaluated shall include a no action alternative, remedial actions that utilize permanent solutions, and alternatives that maximize resource recovery technologies;~~
- ii. ~~A threshold screening process to determine which applicable remedial technologies, alone or in combination, will in the short and long term:~~
  - (a) ~~attain clean up levels protective of public health and the environment; and~~
  - (b) ~~comply with State standards, requirements, criteria, limitations and guidelines.~~
- iii. ~~A further screening process to balance in the long and short term the following factors for each applicable remedial technology or alternative identified in Section ii. above:~~
  - (a) ~~The degree to which the toxicity, mobility and volume of contaminants is permanently and significantly reduced;~~
  - (b) ~~The present worth cost of the remedial alternative, and;~~
  - (c) ~~The remedial alternative's implementability in terms of technical feasibility, including technical difficulties and unknowns associated with the construction and operation of the technology, reliability of the technology, ease of undertaking additional remedial actions, and ability to monitor the effectiveness of the remedy;~~
- iv. ~~Treatability testing, if necessary and appropriate~~
- v. ~~A determination of which remedial alternative, or combination of remedial alternatives, the Respondents proposes to DEP as being the most appropriate to meet the remedial objectives set forth herein;~~
- vi. ~~The FS shall evaluate the durability, reliability, and effectiveness of any proposed remedy, including remedies employing Institutional Controls and a no action alternative. Included with the remedial alternatives shall be a review of applicable technologies that address contaminated [modify, e.g. groundwater, surface water, soil, and vapor intrusion risks] at and from the site.~~

4. ~~**Remedial Action Plan:**~~ The RAP shall include a narrative description for the remedial action selected pursuant to paragraph 12 of the Consent Order.

A. ~~Plans and technical specifications for performing the Remedial Action, including when appropriate treatability demonstrations, including bench scale and pilot testing for any selected groundwater extraction and treatment system and soil treatment system if such systems are required by the RAP. The plans and technical specifications shall attain the clean up standards specified in the plans and technical specifications shall be developed in conjunction with the DEP in the following phased approach:~~

i. ~~**Conceptual Design:**~~ The Respondents shall submit for DEP review and approval a ~~Conceptual Design (30%)~~ that contains:

(a) ~~A Basis of Design ("BOD") Report presenting results of pre design activities, a description of the Remedial Action activities to be performed, and the assumptions that will be used to support the design; and~~

(b) ~~30% plans, drawings, sketches, calculations, and technical specifications.~~

ii. ~~**Draft Final Design:**~~ Following approval or approval with conditions, the Respondents shall submit for DEP review and approval, a "Draft Final Design" document that contains the following:

(a) ~~A Draft Final BOD Report presenting results of investigations or studies not included in the 30% Design's BOD Report, including any modeling that was not presented in the Conceptual Design report, along with any updates to the assumptions that will be used to support the design; and~~

(b) ~~95% plans, drawings, sketches, calculations, and technical specifications.~~

iii. ~~**Final Design:**~~ Following approval or approval with conditions of the draft final design, the Respondents shall provide for DEP review and approval a "Final Design" that contains the following:

(a) ~~A Final BOD Report presenting results of investigations or studies not included in the Draft Final Design's BOD Report, including any modeling that was not presented in the previous design reports along with any updates to the assumptions that will be used to support the design; and~~



(b) ~~100% plans, drawings, sketches, calculations, and technical specifications.~~

B. ~~A proposed schedule for implementing the remedial action plan; and~~

C. ~~A process for modifying the RAP; and~~

D. ~~A proposal for determining when clean up levels have been obtained, such as [modify as appropriate, e.g. when the applicable cleanup levels shall have been maintained for eight (8) consecutive quarters throughout the aquifer].~~

5. ~~**Environmental Covenants:** If necessary to protect public health or the environment, the Respondents shall have restrictions placed on the deed and the use of this Site and shall provide documentation of such restrictions to the DEP. All these restrictions shall meet the standards of Maine's *Uniform Environmental Covenants Act*, 38 MRSA §§ 3001-1313 ("UECA").~~

6.1. ~~**Site Restoration:** Following completion of the remedial action, the respondents shall remove equipment and restore the site for subsequent use, in consultation with the property owner. The Respondents shall submit a site restoration plan to the DEP for review and approval, and then implement the plan.~~